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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

REZA ESLAMINIA,
MINA HAKIMI ESLAMINA,
AMIR ESLAMINA,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATIONS;
U.S. DEPARTMENT OF JUSTICE,

Defendants.

No. C 99-3249 MHP

**DEFENDANTS' RESPONSE TO THE
COURT'S REQUEST FOR FURTHER
SUBMISSIONS; AND RENEWED
ADMINISTRATIVE MOTION FOR
LEAVE TO PRESENT CLASSIFIED
EXHIBIT 1 TO THE DECLARATION OF
DAVID HARDY IN CAMERA AND
UNDER SEAL; ~~proposed~~ ORDER**

This is an action arising under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). On August 10, 2009, the Court directed the Defendants to address the FOIA exemptions in light of 25 years passing since the records in question were classified. (ECF Dkt. 66). The parties responded. (ECF Dkt. 67, 69). On November 24, 2009, Defendants made an Administrative Motion for Leave to Present Classified Exhibit. (ECF Dkt. 70). That request remains pending and is renewed herein.

On August 26, 2011, the Court asked the parties for further submissions on the implication of Executive Order 13526, 75 Fed. Reg 707 (Dec. 29, 2009), which replaces Executive Orders 13292 and 12958, on the declassification of the records at issue here. (ECF Dkt No. 89).

Defendants have carefully reviewed Executive Order 13526 and determined that the records

1 will not be automatically declassified in December 2011, and that the continued application of
2 FOIA Exemption (b)(1) remains warranted and appropriate. *See* Declaration of David M. Hardy
3 (Hardy Decl.), ¶¶ 4-5 (Attached hereto as Exhibit A).

4 Under the FOIA, 5 U.S.C. § 552(b)(1) exempts from disclosure those records that are:

5 (A) specifically authorized under criteria established by an Executive Order to be kept secret in
6 the interest of national defense or foreign policy; (B) are in fact properly classified pursuant to
7 such Executive Order”

8 As noted by the Court, section 3.3 of E.O. 13526 reads in relevant part:

9 Automatic Declassification. (a) Subject to paragraphs (b)-(d) and (g)-(j) of this section, all
10 classified records that (1) are more than 25 years old and (2) have been determined to have
11 permanent historical value under title 44, United States Code, shall be automatically
12 declassified whether or not the records have been reviewed. All classified records shall be
13 automatically declassified on December 31 of the year that is 25 years from the date of origin,
14 except as provided in paragraphs (b)-(d) and (g)-(j) of this section. If the date of origin of an
15 individual record cannot be readily determined, the date of original classification shall be used
16 instead.

17 E.O. 13526 § 3.3(a). Section 3.3(b) lays out numerous exceptions to the automatic declassification
18 provision. The documents at issue here were classified in 1984 and shall remain classified as set
19 forth in Exhibit 1 to the Hardy Declaration. Hardy Decl. ¶ 5.

20 Pursuant to Civil L.R. 7-11 and 79-5, Defendants renew seeking leave of Court to present
21 classified Exhibit 1 to the Declaration of David M. Hardy in camera and under seal to the Court in
22 support of their February 14, 2000 Motion for Summary Judgment, in response to the Court’s
23 August 10, 2009 Civil Pretrial Minute Order directing further briefing from the parties, and in
24 response to the Court’s August 25, 2011 Order Re Further Submissions.

25 The in camera exhibit will address why the requested documents remain exempt from
26 disclosure under the FOIA. The Defendants last made an *ex parte* request to file a declaration
27 under seal in November 2009, and such request remains pending. The underlying classified
28 documents referenced in the in camera exhibit will be stored in a secure facility and will also be
made available for the Court’s in camera review upon request. *See* 28 C.F.R. § 17.46.

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1 Dated: September 15, 2011

Respectfully submitted,

2 MELINDA HAAG
United States Attorney

3
4 _____/s/
5 ILA C. DEISS
Assistant United States Attorney

6
7 **~~[PROPOSED]~~ ORDER**

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9 Upon renewed application by the Defendants, and for good cause shown, IT IS HEREBY
10 ORDERED THAT the Defendants, through counsel, present Exhibit 1 to the Declaration of David
11 M. Hardy in camera and under seal on September 22, 2011, at 2:00 am/pm.

12 IT IS SO ORDERED.

13
14 DATE: 9/16/2011

15 MARILYN HALL PATEL
United States Attorney

